

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIRNA E. SERRANO, et al.,

Plaintiffs,

v.

CINTAS CORPORATION,

Defendant.

CIVIL ACTION NO. 04-40132

DISTRICT JUDGE SEAN F. COX

MAGISTRATE JUDGE DONALD A. SCHEER

ORDER DENYING EEOC'S
MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND ANSWERS

EEOC's Motion to Compel Production of Documents and Answers was referred to the undersigned magistrate judge for hearing and determination. The parties appeared, by counsel, for hearing on April 20, 2010. Having reviewed Plaintiff's Motion, together with Defendant's Response and Plaintiff's Reply, and having heard the arguments of counsel, I find that the Motion should be denied.

This action was filed by EEOC on behalf of persons whom it alleged were victims of gender based discrimination in hiring decisions by Defendant. EEOC originally contemplated the prosecution of this action as a class litigation on the theory that Defendant maintained a pattern and practice of gender based discrimination. The agency served discovery requests on Defendant in September 2009, seeking information relating to hiring decisions in all of Cintas' Michigan locations. Cintas served initial responses in December 2009, and provided additional information in January 2010. Defendant's initial document production totaled approximately 65,000 pages, which were produced in unredacted form. Subsequent productions, however, contained redactions eliminating

basic identification data relating to job applicants. EEOC filed the instant Motion on March 19, 2010, seeking the redacted data.

On February 9, 2010, the district judge entered an Order precluding EEOC from advancing its claims against Cintas on a “pattern and practice” theory under 42 U.S.C. §2000e-(6), and limiting Plaintiff to the prosecution of the case under 42 U.S.C. §2000e-5. Based upon that Order, Cintas maintains that the EEOC should not be permitted to discovery information about Cintas’ Michigan locations to which no §706 claimants applied, because the request for such information is not reasonably calculated to lead to the discovery of evidence admissible in the individual §706 cases. Cintas maintains that production of the unredacted information would be highly burdensome, and notes that the EEOC is precluded from offering evidence of pattern and practice discrimination to prove a specific discrimination claim.

In response, the EEOC observes that Defendant began to redact its discovery responses prior to the February 9, 2010 Order restricting the case to §706 claims, and before the subsequent Order establishing a deadline for the identification of individual claimants. Plaintiff argues that Defendant should not be permitted to unilaterally withhold class related data in responses which were due prior to the court’s restriction, or identification data in responses due prior to the deadline for identifying individual claimants. On its face, that argument has substantial appeal. Cintas argues in response, however, that the district judge’s Order of February 9, 2010 confirms that the EEOC did not plead a cause of action under 42 U.S.C. §2000e-6 and, therefore, was never entitled to discovery in support of a pattern and practice theory. My reading of the Order is consistent with Cintas’ position. The EEOC was provided with copies of job applications submitted to

Cintas, and undertook to contact potential claimants with a view to representing them in a lawsuit. At this stage of the case, I am satisfied that the burden and expense of producing documents from Cintas locations not associated with current claimants outweighs the potential for identification of additional claimants.

IT IS THEREFORE ORDERED that the EEOC's Motion to Compel Production of Documents and Answers is denied.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: April 22, 2010

CERTIFICATE OF SERVICE

I hereby certify on April 22, 2010 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on April 22, 2010: **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217